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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: SOCIAL MEDIA ADOLESCENT
ADDICTION/PERSONAL INJURY PRODUCTS
LIABILITY LITIGATION

This Document Relates To:

ALL ACTIONS

MDL No. 3047

Case No. 4:22-md-03047-YGR (PHK)

**AGENDA AND JOINT STATEMENT
FOR AUGUST 9, 2024, CASE
MANAGEMENT CONFERENCE**

Judge: Hon. Yvonne Gonzalez Rogers

Magistrate Judge: Hon. Peter H. Kang

Pursuant to Case Management Order (“CMO”) No. 1 (ECF 75), the Parties submit this agenda and joint statement in advance of the August 9, 2024 Case Management Conference (“CMC”).

I. Update on Pending Motions

A. Motion to Dismiss Personal Injury Plaintiffs’ Claims Against Mark Zuckerberg

On April 15, 2024, the Court issued an order granting Defendant Mark Zuckerberg’s motion to dismiss 25 Personal Injury (“PI”) Plaintiffs’ claims against him in his individual capacity, with leave to amend (ECF 518). *See* ECF 753. On April 26, 2024, pursuant to Case Management Order No. 13, ECF 780 (“CMO 13”), these 25 PI Plaintiffs filed a consolidated addendum to their complaints. *See* ECF 794; ECF 832-1 (unredacted version). Defendant filed his motion to dismiss on May 10, 2024 (ECF 833), the PI Plaintiffs filed their opposition on May 23, 2024 (ECF 889), and Defendant filed his reply on May 30,

2024 (ECF 916). The Court heard oral argument on this motion on July 12, 2024, and the Court has taken the motion under submission. *See* Case Management Order No. 16 (ECF 1023) (“CMO No. 16”).

B. Motion to Dismiss Negligence *Per Se* Claim of PI Plaintiffs

On June 28, 2024, the Parties met and conferred regarding their proposals for a supplemental briefing schedule on Defendants’ motion to dismiss the PI Plaintiffs’ negligence per se claims. Plaintiffs proposed to continue the Parties’ discussions until after the Court rules on Meta’s pending motion to dismiss the Multistate Attorneys General (“AGs”) Complaint (ECF No. 517), including to discuss whether briefing on negligence per se should be limited to bellwether claims. Defendants are amenable to that approach, subject to the PI Plaintiffs’ agreement that this issue may be briefed in a supplemental motion to dismiss.

C. Motion to Dismiss Certain Non-Priority Claims of PI Plaintiffs

On December 22, 2023, Defendants moved to dismiss the PI Plaintiffs’ remaining “non-priority claims” (Counts 5, 12, 14, 16–18) asserted in the PI Plaintiffs’ Second Amended Master Complaint. *See* ECF 516. The PI Plaintiffs filed their opposition on February 5, 2024. *See* ECF 597. Defendants filed their reply on February 26, 2024. *See* ECF 644. Defendants and the PI Plaintiffs argued this motion at the June 21, 2024, hearing and the Court has taken the motion under submission. *See* ECF 976, CMO No. 15 at 1.

D. Motion to Dismiss AG Complaints, Consumer Protection Claims, and Misrepresentation Claims

On April 19, 2024, the Court heard argument on Meta’s motion to dismiss the Multistate AGs’ Complaint, the Florida AG’s Complaint, and the PI Plaintiffs’ Consumer Protection and Misrepresentation Claims (Counts 7-9). *See* ECF 517.¹ On May 14, 2024, Meta filed supplemental authority in support of its motion to dismiss (ECF 844), and the AGs responded on May 20, 2024 (ECF 876). On June 19, 2024,

¹ Defendants YouTube, Snap, and TikTok joined Meta’s motion to dismiss Count 7 of the PI Plaintiffs’ Amended Master Complaint. *See* ECF 519. The AGs and PI Plaintiffs opposed the motions. *See* ECF 599; 600.

the AGs filed an unopposed administrative motion for leave to file additional supplemental authority (ECF 952), which the Court granted on the record at the June 21, 2024 CMC.

E. Motion to Dismiss Florida AG Complaint

Florida filed an Amended Complaint on April 29, 2024 (*see* Case 4:23-cv-05885-YGR, ECF 23) and a *Lexecon* objection on April 25, 2024 (*see* Case 4:23-cv-05885-YGR, ECF 22). Florida and Meta stipulated to a briefing schedule for Meta’s motion to dismiss Florida’s Amended Complaint and the Court granted the stipulation at the June 21, 2024 CMC. The briefing has been completed (*see* Case 4:23-cv-05885-YGR, ECFs 30, 32 and 33). The Court set oral argument for the September 13, 2024 CMC. ECF 1023.

F. Motion to Dismiss Claims Asserted in Certain PI Plaintiffs’ SFCs Against Snap

On January 12, 2024, Defendant Snap moved to dismiss claims under 18 U.S.C. §§ 2252 and 2252A (also known as the “Identified Counts”) asserted in certain PI Plaintiffs’ amended Short-Form Complaints pursuant to CMO No. 7 (ECF 479). *See* ECF 533. Those PI Plaintiffs filed their opposition on February 5, 2024. ECF 598. Defendant Snap filed its reply on February 15, 2024. ECF 613. The PI Plaintiffs and Snap argued this motion at the June 21, 2024 hearing and the Court has taken the motion under submission. *See* ECF 728, CMO No. 12 at 6 (setting hearing).

G. Motion to Dismiss School District and Local Government Entity Plaintiffs’ Master Complaint

On February 5, 2024, Defendants moved to dismiss the claims asserted in the School District and Local Government Entity (“SD/GE”) Plaintiffs’ Master Complaint (ECF 504). *See* ECF 601. The SD/GE Plaintiffs filed their opposition on March 4, 2024. *See* ECF 668. Defendants filed their reply on March 25, 2024. *See* ECF 723. Defendants and SD/GE Plaintiffs argued this motion during the May 17, 2024 CMC and the Court has taken the motion under submission. *See* ECF 883, CMO No. 14 (noting separate order will issue and stipulation with respect to Utah and Arizona law).

II. Request for Judicial Intercircuit Assignments

In Case Management Order No. 15 (ECF 976), the Court indicated that it would seek temporary intercircuit assignments in the Eastern District of Pennsylvania, Western District of Kentucky, Northern District of Georgia, and District of Maryland to enable the Court to preside over the trials of bellwether cases that Defendants had selected in those jurisdictions where the bellwether Plaintiffs asserted a *Lexecon* objection. The Parties understand that the Court intends to have this issue resolved within the next month or so, after speaking with Chief Judge Sutton.

III. Loss of Consortium Claims

Pursuant to the Court's instruction in CMO No. 16 (ECF No. 1023), the PI Plaintiffs filed today, August 2, 2024 (ECF 1046), their position regarding the PI Plaintiffs' claims asserted in Count 18 of the Second Amended Master Complaint ("SAMC") (ECF No. 494). Defendants anticipate filing a short response to Plaintiffs submission.

IV. Discovery Management Conference Statement

A copy of the Parties' Discovery Management Conference Statement for the August 8, 2024 DMC, due this same date, will be sent by email to Judge Gonzalez Rogers after it is filed.

V. JCCP Status Update

On July 19, 2024, Judge Kuhl held a status conference. During the status conference, Judge Kuhl heard argument regarding the representativeness of one of the PI bellwether picks and ruled that the case was representative and would remain as one of the bellwether cases. There are currently 21 PI plaintiffs who remain in the JCCP bellwether pool (including the above-referenced disputed case). Given the existing size and breadth of the pool, the parties agreed, and Judge Kuhl ordered, that no further selections need to be made. Discovery is open and Judge Kuhl indicated she would set trial dates for bellwether cases at the next status conference on August 29, 2024.

With respect to discovery matters, Judge Kuhl ordered the JCCP plaintiffs to address their objection to Judge Kang's ruling on the relevant time period applicable to Meta's document productions to Judge Kang. They intend to do so at the August 8, 2024, DMC, as previewed in the Parties' DMC

statement. Judge Kuhl also ordered the parties to submit briefing by July 29, 2024 regarding “discovery topics that may arise with regard to development of the [JCCP] bellwether cases and each side’s position as to whether this Court versus Magistrate Judge Kang should deal with that which,” 7/19/24 JCCP CMC Tr. 29:28-30:3, and ordered the parties to meet and confer on limits, if any, on the number of interrogatories (“Rogs”) or requests for admission (“RFAs”). On August 1, 2024, Judge Kuhl heard argument on the issue of whether the MDL Court or the JCCP Court will handle discovery issues specific to the bellwether cases selected in the JCCP, and ruled as follows:

(1) Judge Kuhl ordered that the MDL Court (Magistrate Judge Kang) will set numerical discovery limits for written discovery (Rogs and RFAs) propounded by Plaintiffs to Defendants specific to Bellwether PI Plaintiffs in the JCCP.

(2) Judge Kuhl ruled that she would decide whether to allow additional written discovery (Rogs and RFAs) to be propounded to the JCCP PI Bellwether Plaintiffs concerning Defendants’ affirmative defenses as applied to the JCCP PI Bellwether Plaintiffs. (At this time there are no affirmative defenses pleaded in the MDL.) Following argument, Judge Kuhl determined that five of the RFAs and accompanying California Form Rog No. 17.1 previously served by each of the JCCP Bellwether PI Plaintiffs on Defendants must be responded to by Defendants, and indicated that she may later allow additional discovery regarding Defendants’ affirmative defenses.

(3) Judge Kuhl ruled that she will handle disputes regarding the sufficiency of written discovery responses regarding JCCP bellwether specific discovery (including requests for production of documents specific to JCCP Bellwether Plaintiff accounts); JCCP Bellwether specific deposition disputes; and Defense Medical Examinations of JCCP Bellwether Plaintiffs.

(4) Judge Kuhl ruled that she will handle disputes regarding third-party discovery taken by Defendants pertaining to the JCCP Bellwether Plaintiffs (unless there are numerical limits set for such third-party discovery by the MDL Court, in which case Defendants shall comply with those numerical limits).

(5) Judge Kuhl ordered that the issue of supervision of expert discovery will be addressed at a later date.

Judge Kuhl further advised that JCCP leadership counsel should participate in meet-and-confer discussions pertaining to all discovery issues to be addressed by the MDL Court (Judge Kang). Judge Kuhl stated that she will take into account Judge Kang's rulings even as to individualized bellwether issues in the MDL insofar as similar questions are presented to the JCCP court.

Judge Kuhl set the next JCCP CMC for August 29, at 1:45 p.m.

Respectfully submitted,

DATED: August 2, 2024

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ATTESTATION

I, Ashley M. Simonsen, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

Dated: August 2, 2024

By: /s/ Ashley M. Simonsen